

1 **ROBERT H. REXRODE, III**
2 California State Bar No. 230024
3 427 C Street, Suite 300
4 San Diego, California 92101
5 Telephone: (619) 233-3169, Ext. 13
6 Facsimile: (619) 684-3553
7 robert_rexrode@rexrodelawoffices.com

Attorneys for Mr. Mark Neel

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
(HONORABLE M. JAMES LORENZ)

UNITED STATES OF AMERICA,) CASE NO. 07cr3355-LAB
Plaintiff,)
v.) STATEMENT OF FACTS AND
LORI STAUFFER (1),) MEMORANDUM OF POINTS AND
MARK NEEL (2),) AUTHORITIES IN SUPPORT OF
Defendants.) DEFENDANT'S *IN LIMINE* MOTIONS.

I.

FACTUAL HISTORY¹

On November 16, 2007, Mr. Neel was a passenger in a car driven by his now-co-defendant, Lori Stauffer. At the San Ysidro Port of Entry, agents found a person hidden in the car driven by Ms. Stauffer and arrested her and Mr. Neel. About two hours later, two other agents questioned Ms. Stauffer. She made inculpatory statements. Following this interrogation, agents questioned Mr. Neel. He too made inculpatory statements.

¹The following facts are based on information provided by the government. Mr. Neel does not admit their accuracy and reserves the right to challenge them.

On December 12, 2007, the government indicted Mr. Neel and Ms. Stauffer on two counts of violating 8 U.S.C. § 1324. The government also alleges in the indictment that both Ms. Stauffer and Mr. Neel aided and abetted in these violations of 8 U.S.C. § 1324.

II.

MOTION TO EXCLUDE CO-DEFENDANT'S STATEMENTS

The Confrontation Clause forbids the use of hearsay against a criminal defendant at trial, if the defendant is not afforded the right to confrontation. *See Crawford v. Washington*, 124 S. Ct. 1354 (2004); *see also Bruton v. United States*, 391 U.S. 123 (1968). Mr. Neel’s co-defendant made statements to agents, following her arrest, that implicate Mr. Neel. These statements must be excluded.

III.

MOTION TO EXCLUDE STATEMENTS REGARDING FINANCIAL GAIN

The Confrontation Clause forbids the use of hearsay against a criminal defendant at trial, if the defendant is not afforded the right to confrontation. *See Crawford v. Washington*, 124 S. Ct. 1354 (2004). Under Federal Rule of Evidence 802, hearsay statements are inadmissible unless one or more hearsay exceptions apply. When a statement involves multiple levels of hearsay, each level must be independently admissible for the statement to come into evidence. Fed. R. Evid. 805.

19 Presumably, the government here will attempt to introduce statements regarding
20 financial arrangements under the “co-conspirator” exception to the hearsay rule. The
21 government must, however, demonstrate to the Court that such a conspiracy existed at the
22 time the any hearsay statement was made, and that Mr. Neel participated in *that* conspiracy.
23 See *United States v. Larson*, 460 F.3d 1200 (9th Cir. 2006). No such showing has been
24 made.

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1 **IV.**2 **MOTION TO EXCLUDE 404 (b) AND 609 EVIDENCE**3 **A. Rule 404**

4 Federal Rule of Evidence 404 (b) requires that the government provide “reasonable
5 notice in advance of trial” of any evidence of “other crimes, wrongs, or acts” it plans to
6 introduce. Fed. R. Evid. 404(b). The notice requirement is triggered when timely requested
7 by the defendant. *United States v. Vega*, 188 F.3d 1150, 1154 (9th Cir. 1999). Here,
8 Mr. Neel timely requested notice of proposed 404(b) evidence in his discovery requests to
9 the government. The government has given no notice of its intent to introduce 404(b)
10 evidence. Accordingly, such evidence should be excluded from this trial.

11 **B. Rule 609**

12 As for any 609 evidence, Mr. Neel requests advance notice of any convictions the
13 government intends to use for impeachment, should Mr. Neel choose to testify. By its own
14 terms, Rule 609 allows for the admission (subject to Rule 403) of *felony* convictions. Fed.
15 R. Evid. 609(a)(1). Advance notice will help the Court determine the admissibility of any
16 such convictions without having to interrupt the trial itself.

17 **V.**18 **CONCLUSION**

19 Mr. Neel requests this Court grant his motions.

20 Respectfully submitted,

22 Dated: February 26, 2008

23 /s/ Robert H. Rexrode
ROBERT H. REXRODE, III
24 Attorney for Mr. Neel
25 robert_rexrode@rexrodelawoffices.com